

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RASHAD CORTEZ LEE, #213823, )  
  )  
Petitioner,                         )  
  )  
v.                                     ) CIVIL ACTION NO. 2:09cv234-TMH  
  ) (WO)  
J.C. GILES, WARDEN, *et al.*,     )  
  )  
Respondents.                         )

**OPINION and ORDER**

On March 27, 2009, the Magistrate Judge filed a Recommendation in this case recommending that the petition of habeas corpus relief filed pursuant to 28 U.S.C. § 2254 be dismissed as the Petitioner failed to obtain the requisite order from the Eleventh Circuit Court of Appeals authorizing a federal district court to consider his successive habeas application. (Doc. # 5). Petitioner has filed no objection to the Recommendation of the Magistrate Judge, but has filed an “application for a certificate of appealability” (Doc. #6), from the Magistrate Judge’s recommendation. The Magistrate Judge’s recommendation is not appealable, and, thus, does not divest the court of jurisdiction to adopt the Recommendation, *see United States v. Kapelushnik*, 306 F.3d 1090, 1094 (11<sup>th</sup> Cir. 2002) (holding that “a premature notice of appeal does not divest the district court of jurisdiction over the case”). Because the appeal is premature, the certificate of appealability will be denied by separate Order. Upon an independent review of the file in this case and upon consideration of the Recommendation of the Magistrate Judge, it is

ORDERED and ADJUDGED that the Recommendation of the Magistrate Judge be and is hereby ADOPTED, that the petition for habeas corpus relief be and is hereby DENIED, and that this case be and is hereby DISMISSED in accordance with the provisions of 28 U.S.C. § 2244(b)(3)(A).

Done this 27th day of April 2009.

/s/ Truman M. Hobbs

---

TRUMAN M. HOBBS  
SENIOR UNITED STATES DISTRICT JUDGE